

COUNCIL ENFORCEMENT POLICY	
Administration Policy	
TRIM Reference	AR19/37785[v2]
First Issued	28 June 2010
Last Reviewed	February 2024
Next Review	November 2027

1. POLICY STATEMENT

- 1.1 Local Government is charged with legislative responsibilities which protect individuals and the community as a whole. While it is ultimately the responsibility of individuals to comply with the law, Council is also required to carry out activities to enforce compliance.
- 1.2 Enforcement activities include patrolling streets and public places and inspecting premises either on a routine programmed basis or on a random basis and responding to enquiries and complaints.

2. PURPOSE

- 2.1 The purpose of this policy is to:
 - a) provide consistency in enforcement action in matters of non-compliance;
 - b) ensure transparency, procedural fairness and natural justice principles are applied; and
 - c) ensure that enforcement action is proportionate to the alleged offence in each case.

2.2 Scope

This policy applies to all Council enforcement activities including:

- a) Expiating Offences
- b) Parking Expiation
- c) Evidence Collection
- d) Emergency Vehicle Removal
- e) Removing a Vehicle under Section 237
- f) Unclaimed Goods
- g) Review and Withdrawal of an Expiation Notice

2.3 Definitions

The definitions contained herein are not exhaustive and officers may need to consider the relevant legislation for further applicable definitions.

Caution official wording issued by an investigator to inform a person accused of an offence that anything he or she says when taking a statement, may be used in evidence.

Inspection – An examination of a premises, vehicle or business for any reasonable and lawful purpose connected with the administration or enforcement of legislation.

Site Visit – To enter a place for any reasonable and lawful purpose connected with the administration or enforcement of legislation.

Trifling is defined in Section 4(2) *Expiation of Offences Act 1996*.

Vehicle is defined in the *Road Traffic Act 1961*.

Abandoned vehicle is not defined in the legislation, and an assessment in each case will be required, but factors suggesting that a vehicle is abandoned include: the absence of registration plates, labels or other means of identification, a vehicle with little value and no means to identify the owner.

Verbal warnings are conversations with an offender which do not lead to any record of an offence.

Written warnings record the breach and the name of the offender in a manner which can be seen as past history in the event of repeat offending.

Unclaimed goods has the same meaning as section 5 of the *Unclaimed Goods Act 1987*.

2.4 Strategic Reference

5. Governance and Financial Sustainability

5.5 We meet or exceed legislative and accreditation requirements for all relevant programs.

3. Enforcement

3.1 Council adopts a broad approach to “enforcement” which combines the provision of advice to assist with compliance and formal action where necessary. This is intended to encourage higher levels of voluntary compliance.

3.2 Council may also take immediate action when required (for example to ensure public health and safety or to protect the environment) and take firm action against those who act unlawfully when circumstances warrant.

3.3 Only officers who are competent by training, qualification and/or experience will be authorised to take enforcement action. Officers are required to show their authorisations on demand.

3.4 Where a decision is made not to investigate a complaint, the complainant will be advised in writing.

3.5 Enforcement Options

3.5.1 FORMAL ACTION – ORDERS

Service of Orders and Directions are issued in accordance with legislation. Only in circumstances such as a threat to life or immediate threat to public health or safety will an Order be made without giving notice of intention. In these circumstances immediate compliance to resolve a situation can be required.

3.5.2 In most cases the person receiving the Order has a right of appeal to the appropriate court if the Order is considered unreasonable. If an Order is served for which an appeal is possible, Council will advise the recipient in writing of the right to appeal and the relevant legal provisions at the time of serving the Order.

3.5.3 The following circumstances are likely to warrant an Expiation Notice:

- a) breaches of the legislation administered by Council;
- b) failure to correct an identified problem after having been given reasonable opportunity to do so by an Authorised Officer;
- c) failure to comply with the requirements of an Order;
- d) a written warning has been given for a similar offence.

3.5.4 INFORMAL ACTION

Informal action to achieve compliance with legislation may include:

- a) offering verbal or written advice;
- b) verbal warnings and requests for action; or
- c) written warnings.

The circumstances in which informal action may be appropriate include:

- a) the act or omission is not serious enough to warrant formal action;
- b) the individuals past history reasonably suggests that informal action will secure compliance;
- c) the consequences of non-compliance will not pose a significant risk; or
- d) where informal action may prove more effective than a formal approach;
- e) where informal action would be beneficial in a wider public safety context. The recipient will be made aware that the requested actions are not legally enforceable, where appropriate.

3.5.5 MEDIATION

Where practical, Council will make mediation available. Mediation is a possible alternative if problems being complained of are incapable of resolution through other formal or informal means. The use of mediation services may also be appropriate where an aggrieved individual has no wish to pursue action to resolve a complaint by legal means.

3.5.6 NO ACTION

No action will be taken when, after investigation, no breaches of the legislation are discovered. It may also be appropriate to take no action when:

- a) the complaint is frivolous, vexatious or trivial in nature;
- b) the alleged offence is outside Council's area of authority; or
- c) taking action may prejudice other major investigations.

3.6 Action in Regard to a Default

- 3.6.1 Failure to comply with Orders will incur further enforcement action such as launch of a prosecution.
- 3.6.2 Where action in regard to a default is provided for by legislation and the necessary work has not been carried out in the time allowed without good reason, Council may undertake the required work. Before doing the work Council will consider whether there is a realistic prospect that the person responsible will complete the work within a reasonable time. Where work in default is undertaken Council will seek to recover all costs over a fair period, using all statutory means available.
- 3.6.3 The decision to carry out action in default will be made by the Chief Executive Officer or delegate.
- 3.6.4 Where an offence has been committed Council may issue an Expiation Notice or launch a prosecution in addition to taking action to fulfil an Order. This will only be done where the conduct of the recipient justifies taking such steps. Factors such as giving false information, the obstruction of Council workers and the harm or risk of harm caused by the recipient's delay will be considered in determining additional enforcement actions.

3.7 Prosecution

- 3.7.1 A person receiving an Expiation Notice is entitled to elect to be prosecuted for the alleged offence. A prosecution will only proceed where there is a reasonable prospect that an offence can be proved beyond reasonable doubt.

The following circumstances are likely to warrant a prosecution:

- a) a flagrant breach of the law such that public health, safety and welfare have been put at risk;
- b) the alleged breach is too serious or the risks too great to be dealt with by means of an expiation;
- c) a failure to correct an identified serious problem after having been given reasonable opportunity to do so;
- d) a failure to comply with the requirements of an Order;
- e) an established and recorded history of similar offences;
- f) an unwillingness, on the part of the individual or other body, to prevent a recurrence of the problem; or
- g) the recovery of the costs of the investigation or remedial work or financial compensation that are required by Council or an aggrieved party.

3.7.2 Before a prosecution is recommended there must be substantial, reliable and admissible evidence that the offence has been committed.

3.7.3 A decision to prosecute must be in the public interest. The final decision to prosecute will be made by the Chief Executive Officer.

3.8 Service of an Expiation Notice

Where there is evidence that an offence has been committed Council may issue an Expiation Notice or launch a prosecution in addition to serving an Order. This will only be done where it is determined that the conduct of the recipient justifies taking both steps.

4. Expiating Offences

4.1 Expiation notices are written for offences under many pieces of legislation applicable to Local Government and offences created by Council By-laws.

4.1.1 An infringement may warrant expiation and there are processes necessary to serve a legal notice. Council must follow accurate application of relevant legislation and Council Policy when issuing expiations, written and verbal warnings.

4.1.2 Expiation notices are a form of enforcement action which allows a person to 'expiate' an offence with a fine, rather than face prosecution in a criminal court. An expiation notice can only be issued if an expiation fee is fixed under an Act, Regulation or By-law.

4.2 A decision on whether to issue an expiation notice involves an exercise of discretion by an officer. After weighing up all the relevant factors, a determination is made on whether to issue an expiation notice.

4.3 An Expiation Notice may relate to a maximum of three alleged offences arising from the same incident (that is, they are committed contemporaneously, or in succession one following immediately on another).

4.4 Where an expiation notice has been issued for an offence, a second expiation notice may not be issued for another offence arising from the same incident as the first.

4.5 An expiation notice must specify that the notice is to be paid within 28 days from the date of the notice.

4.6 The expiation notice includes details regarding the opportunity of Election to be Prosecuted. The offence may be disputed informally in writing (Action Against Expiation).

- 4.7 If, after the end of the 28 day expiation period, the expiation notice fee has not been paid and no other process is in train in relation to the notice, the Council will send an Expiation Reminder to the alleged offender before further enforcement action can be taken.
- 4.8 An expiation notice can be withdrawn in specified circumstances.
- 4.9 An Expiation Enforcement Warning Notice is issued if the Council has received a statutory declaration by the alleged offender (in accordance with a notice accompanying an expiation notice or expiation reminder notice) and the Council does not accept the statutory declaration as a defence to the alleged offences.

5. Review and Withdrawal of an Expiation Notice

- 5.1 A recipient of an expiation notice is entitled to request a review or withdrawal of the notice which must be undertaken in accordance with the legislation.
- 5.2 Only Authorised Persons can issue an expiation notice and only persons with the relevant sub-delegated authority can withdraw an expiation notice.
- 5.3 Any person in receipt of an expiation notice is entitled to apply for a review of the decision to issue the notice, which may lead to the withdrawal of the notice. The Expiation of Offences Act provides a range of grounds which allow for the withdrawal of expiation notices. The request is to be provided in writing, either by letter, email or Council form.
 - 5.3.1 Council has an officer with the appropriate delegated authority to review and withdraw expiation notices.
 - 5.3.2 The decision to withdraw an expiation notice is a legal decision made under the Expiation of Offences Act. A review of the decision to issue a notice is undertaken formally and in compliance with that Act, after considering the relevant circumstances.
 - a) The reviewing officer will need to be satisfied that there is a prima facie case to support the issue of the expiation notice. That is, that it appears on the evidence at hand that an offence has been committed. This is the same test as the issuing officer is required to apply when considering the evidence to support issuing an expiation notice. While there is no obligation on the reviewing officer to undertake further investigation in respect of the alleged offences, any information provided by an applicant for review should be taken into account.
 - b) in considering whether to withdraw an expiation notice, it is required in some cases to undertake an assessment and form an opinion as to whether one of the grounds set out in the Expiation of Offences Act is available and applicable to withdraw the expiation notice.
 - 5.3.3 An application for review or withdrawal will take into account if the notice falls within any of the grounds under either Section 8A or Section 16(1) of the Expiation of Offences Act. Those grounds include:
 - a) the offence is trifling (see Section 8A);
 - b) the person did not commit the offence (see Section 16(1)(a));
 - c) the notice should not have been given in respect of the offence (see Section 16(1)(a));
 - d) a statutory declaration is received naming another offender (see Section 16(1)(ab));
 - e) the expiation notice is defective (see Section 16(1)(ac)); or
 - f) the Council has decided that the alleged offender should be prosecuted (see Section 16(1)(b)).

- 5.3.4 Any other factors, additional information gained from the applicant and the issuing officer are also taken into account when reviewing the application to withdraw a notice.
- 5.4 If a decision is made to withdraw the notice, Council must advise the applicant, by notice in writing, that the expiation notice has been withdrawn and the grounds for the withdrawal. If the expiation notice is withdrawn following payment of the expiation fee or any instalment of the fee, the fee must be refunded.
- 5.5 A notice **cannot** be withdrawn in some circumstances, even if the evidence supports it. The Expiation of Offences Act does not permit a notice to be withdrawn on the grounds that the offence is trifling if:
- a) any amount has been paid toward the expiation fee; or
 - b) a person has entered into an arrangement under Section 20 of the Fines Enforcement and Debt Recovery Act 2017; or
 - c) Act 2017; or
 - d) an enforcement determination has been made by the Chief Recovery Officer under Section 22 of the *Fines Enforcement and Debt Recovery Act 2017*.

However, the notice may still be withdrawn if it meets any of the other grounds for withdrawal under Section 16(1) of the Expiation of Offences Act.

- 5.6 An applicant is advised in writing of a decision not to withdraw a notice.

6. Parking Expiation

- 6.1 Parking controls are created for a variety of reasons such as efficient traffic flow, public safety, encouraging turnover of cars in popular areas and assisting residents and businesses. Issuing parking expiations is one means of enforcing parking controls. A breach of a parking offence may warrant an expiation notice.
- 6.1.1 Expiation notices that are issued for motor vehicle offences must include a **statutory declaration form** to enable a vehicle owner to declare that he or she was not the driver of the vehicle at the time of the offence.
- 6.1.2 Illegally parked/stopped vehicles are identified through personal observation or as follow up to a report. Officers who observe a breach of the Australian Road Rules may either expiate, issue a written warning, or provide a verbal warning. This decision is at the discretion of the officer concerned and is determined by consideration of the seriousness of the infringement, the potential hazard caused, the location, and if previous warnings have been issued and ignored.
- 6.1.3 If a stopped vehicle is occupied the driver may be advised of the breach and be given the option to move the vehicle without an expiation notice. Exceptions to this approach are around schools, permit areas for persons with disability and with proven, consistent offenders.
- 6.1.4 In zones where time restrictions apply, tyres are marked and checked again at least 5 minutes after the time permitted expires.
- 6.1.5 If expiation is warranted, photographic evidence is taken clearly identifying the vehicle and also where identifiable the offence or parking breach.
- 6.1.6 The Act states that if a vehicle is involved in the commission of the alleged offence or offences, and is found unattended, the expiation notice may be served by affixing or placing it on that vehicle. Alternatively, the expiation notice may be posted to the registered owner of the vehicle.

7. Evidence Collection

- 7.1 There are various methods for collection of evidence in relation to suspected breaches of legislation. It is a requirement that the correct method of evidence collection is followed to support any future court proceedings.
- 7.2 Prior to any inspection it is a requirement of the authorised officer to:
 - 7.2.1 Check rights of entry to the site;
 - 7.2.2 Check past history and collate necessary information;
 - 7.2.3 Arrange appointments or obtaining a warrant of entry (from local Court) if necessary;
 - 7.2.4 Certain circumstances may require an ad-hoc interview to take place in the field without prior notice or preparation.
- 7.3 When conducting an inspection the Authorised Officer is to identify themselves by presenting photo identification (Authorised Officer Identification Card).
- 7.4 Forms of evidence include:
 - 7.4.1 Photographic evidence via mobile phone, camera or body worn video device;
 - 7.4.2 Note taking (on-the-spot record including times, dates, persons present, interviews, conversations, incident details and location) in Authorised Officer's notebooks.
- 7.5 Where the nature of the offence under investigation is serious and could result in a Court proceeding or there is a reasonable expectation that the person being interviewed has committed the relevant offence and is likely to be prosecuted for it, a caution is given to the individual to be questioned.
 - 7.5.1 A caution is provided to ensure that the individual is aware that any comments they make may be taken down and may be used as evidence.
 - 7.5.2 If a person under investigation for a serious offence makes an incriminating statement before there is time to appreciate the essence of the statement, the person is cautioned immediately.
 - 7.5.3 The person is not cautioned if questions are put to them for other purposes, for example, to establish their identity, or the ownership of any vehicle or animal.
 - 7.5.4 Any interpreter providing assistance at an interview must be briefed on the background information and confidentiality prior to the interview.
 - 7.5.5 A statement is an individual's truthful account of an incident they saw, heard or said. The officer taking the statement will include comprehensive, accurate recording and use of the witnesses' language. The witness will be asked to sign the statement.

8. Emergency Vehicle Removal

- 8.1 Councils receive reports about unattended vehicles obstructing traffic. Occasionally they may be left in places which cause a public safety hazard and it is not appropriate to wait 24 hours and utilise Section 237 of the *Local Government Act 1999*.

Section 40N of the Road Traffic Act 1961 gives Council **and the police** power to remove an unattended or broken down vehicle on any bridge, culvert or freeway and on any road if the location is:

- a. Causing harm or creating a risk of harm to public safety, the environment or road infrastructure
- b. Causing or likely to cause an obstruction to traffic or any event lawfully authorised to be held on the road or
- c. Obstructing or hindering or likely to obstruct or hinder vehicles from entering or leaving land adjacent to the road

In the first instance the matter should be referred to the police.

Section 40P of the Road Traffic Act 1961 outlines the process which must be followed **if** Section 40N powers have been exercised.

- 8.2 If an authorised officer determines that police assistance cannot be obtained where a vehicle has been left in a situation which is hazardous to public safety and it is necessary to remove it, they will undertake a process to identify the owner, remove the vehicle and ultimately dispose of the vehicle if appropriate.
- 8.3 Only Authorised Persons can move and impound a vehicle.
- 8.4 If a decision is made to remove a vehicle and the owner cannot be contacted, arrangements will be made to tow the vehicle for impounding;
 - 8.4.1 In the presence of the tow truck driver or a second officer, loose property will be removed from the vehicle, a record of each item and photographs will be taken and the items securely stored. Both the officer and witness will sign the record of personal effects removed. Additional photographs including any accessories and detail of any damage to the vehicle are also taken.
 - 8.4.2 Once the vehicle has been impounded, police are notified of the vehicle removal.
 - 8.4.3 Where the owner of a vehicle cannot be contacted a Public Notice is placed in "The Advertiser", within 14 days of impounding.
- 8.5 Where the last registered owner of the vehicle can be identified, the person who removed the vehicle must ensure the owner of the vehicle is notified of the removal of the vehicle and the place to which the vehicle was taken.
- 8.6 The owner has one month after service or publication of the notice to take possession of the vehicle and pay all expenses in connection with the removal, custody and maintenance of the vehicle and serving or publishing of the notice.
- 8.7 If the vehicle is not claimed, it can be disposed of. However, as a precaution, disposal should not proceed until at least 37 days have elapsed.
- 8.8 No vehicle will be released until all costs have been paid.
- 8.9 If the owner does not wish to reclaim the vehicle from Council, photographic ID and proof of ownership are recorded and the owner is required to sign a Release of Property Form and pay the fees due. No further costs of disposal can be charged to the owner beyond this point.
- 8.10 The owner is entitled to the return of the goods/items left in the vehicle after producing proof of vehicle ownership. Should the goods remain unclaimed they will be dealt with in accordance with the provisions of the *Unclaimed Goods Act 1987* and associated Regulations. Goods are not disposed of before the disposal of the associated vehicle has been finalised.

9. **Removing a Vehicle under Section 237**

- 9.1 Council receives reports about unattended vehicles left on a public road, public place or local government land for a period exceeding 24 hours, or which may have been abandoned.

Some unwanted vehicles are left in streets and parks, which can be unsightly, attract vandalism and create unsafe road conditions. However, vehicles may also have been parked by owners unaware of the consequences.

- 9.2 Section 236 of the *Local Government Act 1999* gives Councils the right to expiate or prosecute a person who abandons a vehicle or farm implement on a public road or place.

- 9.3 Section 237 of the *Local Government Act 1999* gives Councils power to remove vehicles left for **not less than 24 hours**. However, the intention is to be able to deal with vehicles that have been left for long periods without moving, not to impound a vehicle simply because it has been parked for more than 24 hours.

- 9.4 Section 53 of the *Motor Vehicle Act 1959* makes it an offence to leave an unregistered vehicle on a public road. Only the SA Police can take action under this section.

- 9.5 When not causing a hazard/nuisance to the public, impounding is a last resort after all other avenues to locate the owner and have them remove the vehicle have been exhausted.

- 9.6 If an officer believes that the vehicle may be subject to theft or vandalism, discretion exists to tow the vehicle as long as the warning notice has been placed on the vehicle and the mandatory 24 hour period has expired.

- 9.7 Where there is no vehicle identification and local inquiries have not identified an owner, prompt removal following the statutory processes is preferable.

- 9.8 Steps undertaken in removal of a vehicle:

9.8.1 Letter to owner requesting removal; informing the owner of a vehicle of Council's intentions, where the vehicle is not creating a hazard.

9.8.2 If the owner is found and personal contact (telephone or visit) can be made, the authorised officer will advise of the law and if necessary, negotiate a reasonable time to remove the vehicle.

9.8.3 Removal of vehicles – warning notice.

- 9.9 Standard procedures to identify ownership, inspect, report on and take any emergency action regarding unattended vehicles is followed.

- 9.10 If it is determined that the vehicle is in a dangerous position, SAPOL are notified and will then attend to the matter. If police assistance is unavailable, action may be taken to remove the vehicle.

- 9.11 If a vehicle is stolen the police will contact the owner.

- 9.12 If there is sufficient evidence to show that vehicle is abandoned, consideration will be given to issue an expiation notice, or launch a prosecution, under s.236 of the *Local Government Act 1999* to recover costs.

10. Unclaimed Goods

- 10.1 Impounded vehicles can contain items which must be treated according to the *Unclaimed Goods Act 1987*. When goods have been removed from a vehicle in Council's, necessary steps are taken to return or dispose of them.
- 10.2 The elapse of 42 days from the date at which request is made is key to determining the day on which the goods become 'unclaimed goods'. The days are counted from the day after the request is made to the owner.
 - 10.2.1 The statutory time frames mean that the goods will be in the possession of the Council for 42 days, plus 3 calendar months, before they can be sold or disposed of as 'unclaimed goods'.
 - 10.2.2 Goods will not be disposed of before the disposal of the associated vehicle has been finalised.

11. Local Nuisance and Litter Control

- 11.1 Council has authority under the Local Nuisance and Litter Control Act 2016, to take enforcement action in relation to local nuisance and litter control.
- 11.2 The purpose of these enforcement activities is to prevent littering, improve the amenity of the local area and create and maintain a clean and healthy environment.
- 11.3 Council's Authorised Officers may enter or inspect any premises or vehicle when administering these duties, make recordings or photos and seize materials or items, in accordance with the powers outlined within the Act.
- 11.4 Local Nuisance includes any adverse effect on the amenity value of an area caused by noise, odour, smoke, fumes, dust, animals or rodent/pest infestations.
- 11.5 Authorised Officer may issue Expiations for offences involving local nuisance or littering.

12. RESPONSIBILITY & REVIEW

12.1 Responsible Officer

Director Infrastructure

12.2 Availability

This policy will be available on Council's website.

12.3 Review

This policy will be reviewed within 12 months of a General Election for Local Government, or as required to meet other obligations.

13. REFERENCES

13.1 Legislation

Australian Road Rules
Expiation of Offences Act 1996
Expiation of Offences Regulations 2011
Fines Enforcement and Debt Recovery Act 2017
Fines Enforcement and Debt Recovery (Fees) Variation Regulations 2018

Local Government Act 1999
Local Nuisance and Litter Control Act 2016
Motor Vehicle Act 1959
Road Traffic Act 1961
Road Traffic (Road Rules- Ancillary and Miscellaneous Provisions) Regulations
2014
Unclaimed Goods Act 1987

13.2 Other References

Council's Vehicle Removal and Expiation Procedure
Records Management Policy